Federal Court Cour fédérale

Date: 20211113

Docket: T-1694-21

Citation: 2021 FC 1232

2021 FC 1232 (CanLII)

Ottawa, Ontario, November 13, 2021

PRESENT: Mr. Justice McHaffie

BETWEEN:

DAVID LAVERGNE-POITRAS

Applicant

and

THE ATTORNEY GENERAL OF CANADA (MINISTER OF PUBLIC SERVICE AND PROCUREMENTS) AND PMG TECHNOLOGIES INC.

Respondents

ORDER AND REASONS

I. Overview

[1] David Lavergne-Poitras seeks an interlocutory injunction staying the implementation of the Government of Canada's "COVID-19 vaccination requirement for supplier personnel" until his challenge to it is heard on its merits. The supplier vaccination policy, as I will term it, requires personnel of third party suppliers to the federal government to be fully vaccinated against COVID-19 to access Government of Canada workplaces where federal government

employees are present. It also requires suppliers to certify that their personnel who access federal government workplaces where they may come into contact with public servants are fully vaccinated. If not stayed by the Court, the supplier vaccination policy will go into effect this coming Monday, November 15, 2021.

[2] Mr. Lavergne-Poitras is an employee of the respondent PMG Technologies Inc, a supplier to the federal government. He is not vaccinated against COVID-19 and does not wish to be vaccinated. As a healthy 35-year-old with a family history of heart disease, he is concerned about the potential complications, side effects, and risks associated with available COVID-19 vaccines. PMG has provided Canada with the certification required by the supplier vaccination policy. PMG has advised Mr. Lavergne-Poitras that because of the policy it will be laying off or terminating him and other unvaccinated individuals as of November 15, 2021 unless their vaccination status changes.

[3] Mr. Lavergne-Poitras argues the supplier vaccination policy was not validly issued, and that it breaches his rights to liberty and security of the person guaranteed by section 7 of the *Canadian Charter of Rights and Freedoms*. He claims the policy is unsupported by evidence and that it is arbitrary, overbroad, and grossly disproportionate to its objective. His arguments on these issues will be decided at a later date at the hearing of his application. On this motion, Mr. Lavergne-Poitras argues that he has raised a serious issue with respect to his challenges, that he will suffer irreparable harm if the supplier vaccination policy is not stayed, and that the balance of convenience favours issuing an injunction so his *Charter* rights and those of other unvaccinated employees of government suppliers are not infringed between now and the hearing.

2021 FC 1232 (CanLII)

[4] For the reasons set out herein, I am dismissing the motion for an interlocutory injunction. A summary of these reasons is the following:

[5] *Serious issue—Authority*: Mr. Lavergne-Poitras has not demonstrated that Canada lacks authority to issue and implement the supplier vaccination policy. The policy imposes terms on suppliers to the Government of Canada as a contractual matter. Mr. Lavergne-Poitras concedes Canada has the authority to impose terms on tenders for future contracts. For existing contracts, Canada may seek to implement contractual terms with its co-contracting parties. PMG as co-contracting party has provided the certification required with respect to its existing contract. There is no serious issue with respect to the legal authority of the government to issue the policy. I also agree that as a third party to the contract between Canada and PMG, Mr. Lavergne-Poitras would have no standing to raise an argument about the authority to impose contractual terms.

[6] *Serious issue—Section 7 of the Charter*: Contrary to Canada's arguments, I conclude that Mr. Lavergne-Poitras' standing to raise his *Charter* arguments in the context of the contract between Canada and PMG is not so clear that the motion should be dismissed on this basis. Mr. Lavergne-Poitras has raised a serious issue to be determined as to whether there has been a deprivation of his right to liberty or security of the person. However, he has not, on the evidence filed on this motion, raised a serious issue that any such deprivation is contrary to the principles of fundamental justice. As a result, he has not shown a serious issue to be determined that his rights under section 7 of the *Charter* have been violated. I need not assess whether any such violation might be justified under section 1 of the *Charter*.

2021 FC 1232 (CanLII)

[7] *Irreparable Harm:* Even if I had concluded Mr. Lavergne-Poitras had established a serious issue to be determined, I find he has not established that if the injunction is not granted, he will suffer irreparable harm between now and the hearing of his challenge on the merits. Mr. Lavergne-Poitras has confirmed that he does not intend to get vaccinated. The harm he faces is the loss of his job. While this is a significant and important consequence, Canadian courts have confirmed that the loss of employment is something that can be compensated in money damages and is therefore not "irreparable harm" in the sense required to obtain an injunction.

2021 FC 1232 (CanLII)

[8] *Balance of convenience*: I also conclude the balance of convenience does not favour suspension of the policy. The harm to Mr. Lavergne-Poitras of losing his employment must be balanced against the risks of harm to federal government employees of having increased risk of transmission of the SARS-CoV-2 virus that causes COVID-19, including its variants. The Government of Canada has implemented a measured approach to the protection of its employees that includes reducing the risk of transmission by requiring personnel of suppliers who may come into contact with federal government employees, and only such personnel, to be vaccinated. Material harm to the public interest would arise if the requested injunction is issued, both in the form of increased health risks to federal employees and in the form of undermining a considered policy implemented by the federal government as employer. These harms significantly outweigh the harms identified by Mr. Lavergne-Poitras on this motion.

[9] *Alternative relief*: I have also considered Mr. Lavergne-Poitras' request for alternative relief in the form of a more limited injunction staying the application of the supplier vaccination policy just with respect to his worksite or to him. The conclusions above apply equally to this

request, and I agree with the Attorney General that there is no basis to exempt Mr. Lavergne-Poitras or his worksite in particular from the application of the supplier vaccination policy.

[10] The request for an interlocutory injunction is therefore dismissed. The Attorney General has confirmed they do not seek their costs.

II. Issues and Analytical Framework

[11] The injunction Mr. Lavergne-Poitras now seeks is a temporary one that will be in force until his challenge to the supplier vaccination policy can be heard on its merits.

[12] It is well established that to get such an interlocutory injunction, an applicant must show three things: (1) there is a serious issue to be decided at the hearing of the ultimate application; (2) they will suffer irreparable harm if the injunction is not granted until the hearing; and (3) the "balance of convenience" favours granting the injunction: *RJR-MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311 at p 334.

[13] Each of these three elements must be met. However, they are not independent silos, in the sense that a stronger finding on one or more of the elements may lower the threshold for the other elements: *Bell Media Inc v GoldTV.Biz*, 2019 FC 1432 at para 56. In applying this three-part test, the "fundamental question is whether the granting of an injunction is just and equitable in all of the circumstances of the case": *Google Inc v Equustek Solutions Inc*, 2017 SCC 34 at paras 1, 25.

2021 FC 1232 (CanLII)

[14] Mr. Lavergne-Poitras' request for an interlocutory injunction therefore raises the following issues:

A. Is there a serious issue to be decided at the hearing of the application, and in particular:

(1) Is there a serious issue as to whether the supplier vaccination policy is validly issued?

(2) Is there a serious issue as to whether the supplier vaccination policy is unconstitutional by depriving of Mr. Lavergne-Poitras of his rights to liberty or security of the person in a manner that is not in accordance with the principles of fundamental justice, contrary to section 7 of the *Charter*?

B. Will Mr. Lavergne-Poitras suffer irreparable harm between now and the hearing of the application if the requested injunction is not granted?

C. Does the balance of convenience favour granting or refusing the injunction?

D. As alternative relief, should the Court declare that the supplier vaccination policy does not apply to the facility at which Mr. Lavergne-Poitras works?

[15] Mr. Lavergne-Poitras also asks to be exempted from the usual requirement to give an undertaking to pay any damages that might arise from the injunction if it is ultimately determined it should not have been granted. The Attorney General did not oppose this request.

[16] I will address these issues after a review of the supplier vaccination policy and Mr. Lavergne-Poitras' particular circumstances.

2021 FC 1232 (CanLII)

III. Factual Context

A. *The COVID-19 pandemic and COVID-19 vaccines*

[17] The health and societal impacts of the COVID-19 pandemic are well known. These impacts are described in evidence before the Court, in the form of an affidavit filed by the Attorney General from Dr. Celia Lourenco, a senior scientist with Health Canada responsible for authorization of the COVID-19 vaccines available in Canada. Dr. Lourenco's affidavit discusses the health impacts of the COVID-19 pandemic, the developing knowledge and science with respect to the SARS-CoV-2 virus and COVID-19, and information regarding the development, approval, and monitoring of vaccines.

[18] As of November 9, 2021, Canada had seen a total of over 1.7 million diagnosed cases of COVID-19, resulting in 29,217 deaths. This represents approximately 1.7% of all infections. In addition to being potentially fatal, COVID-19 can result in serious illness and hospitalization. While most who recover report no lasting effects, some suffer from "long COVID," with persistent symptoms. Case rates, hospitalization rates, and death rates vary by age, but no age group is unaffected by the risk of serious illness or death from COVID-19.

[19] According to Dr. Lourenco's evidence, COVID-19 is primarily spread through respiratory droplets and aerosols. It can be transmitted to others by those who show little or no symptoms and might therefore be unaware that they are infected.

2021 FC 1232 (CanLII)

[20] Dr. Lourenco's affidavit describes in detail the process for approval of vaccines in Canada, and in particular the process and review leading to approval of COVID-19 vaccines in Canada. To date, four vaccines have been approved. Two of these are messenger ribonucleic acid (mRNA) vaccines, while two are viral vector vaccines. Most of the detailed scientific evidence in Dr. Lourenco's affidavit regarding the basis for approval and the safety and effectiveness record of COVID-19 vaccines need not be set out for purposes of this motion. It is sufficient to say that the evidence demonstrates that before being approved, COVID-19 vaccines undergo a thorough scientific review of their safety and effectiveness by Health Canada officials, independent of involvement of elected officials; that COVID-19 vaccines reduce both the risk and the impacts of infection; and that vaccination is a key component of Canada's efforts to combat COVID-19.

[21] Of particular relevance is Dr. Lourenco's categorical statement that individuals who are fully vaccinated with either an mRNA vaccine or a viral vector vaccine are less likely to spread COVID-19 to others. While Mr. Lavergne-Poitras does not formally admit this is so, he does not contest it and does not present any contrary evidence. Also important is the recognition that those who are fully vaccinated against COVID-19 can still contract COVID-19. While this represents a small percentage of the vaccinated population, it means that federal public servants who are vaccinated are still at risk of contracting COVID-19, and are at a greater risk of exposure and infection from those who are unvaccinated than from those who are vaccinated.

[22] Dr. Lourenco's affidavit and Mr. Lavergne-Poitras' affidavit both provide information regarding risks associated with COVID-19 vaccines. Each provides the same data with respect to the adverse effects reported after vaccination. As of October 29, 2021, there had been over

2021 FC 1232 (CanLII)

58 million vaccine doses administered in Canada. A total of 22,231 adverse events were reported, of which 5,653 were serious. Serious adverse event reports are therefore associated with about 1 in 10,000 doses although, as with the impacts of COVID-19, the adverse event report rates vary with age groups. Dr. Lourenco underscores that these reports pertain to adverse events following immunization but do not necessarily entail a link to the vaccine.

2021 FC 1232 (CanLII)

B. *The supplier vaccination policy*

[23] On October 6, 2021, Canada implemented a "Policy on COVID-19 Vaccination for the Core Public Administration including the Royal Canadian Mounted Police." Under this public service vaccination policy, unless granted an accommodation based on a certified medical contraindication, religion, or another prohibited ground of discrimination, covered federal government employees who are unwilling to be fully vaccinated or to disclose their vaccination status will be placed on leave without pay on November 15, 2021.

[24] This motion does not address the public service vaccination policy and makes no determinations whatsoever with respect to it.

[25] Also on October 6, 2021, Public Services and Procurement Canada (PSPC) announced on the "Buyandsell.gc.ca" website (the place where the Procurement Branch of PSPC largely manages its tender processes) that in alignment with the public service vaccination policy, the supplier vaccination policy would take effect on November 15, 2021.

[26] For completeness, I have included the full text of the English and French versions of the supplier vaccination policy as Annex A to these reasons. I reproduce here several relevant passages of the English version:

> As of **November 15, 2021**, all supplier personnel must be fully vaccinated to access federal government workplaces. Suppliers will be required to provide a certification to their contracting authority.
>
> […]
>
> *Vaccination requirement for supplier personnel*
>
> As of November 15, 2021, supplier personnel who access federal workplaces must be fully vaccinated. Federal government workplaces include all places of work under the responsibility of the Government of Canada where federal government employees are present.
>
> […]
>
> *Existing contracts and contractors*
>
> Contractor personnel who access Government of Canada workplaces to perform work pursuant to existing contracts are subject to the vaccine requirement.
>
> *Meeting the vaccination requirement*
>
> You are considered **fully vaccinated** if you have received:
>
> - the full series of an accepted COVID-19 vaccine or a combination of accepted vaccines including:
>   - 2 doses of any combination of Moderna Spikevax, Pfizer-BioNTech Comirnaty or AstraZeneca Vaxzevria (including CoviShield)
>   - 1 dose of Janssen (Johnson & Johnson)
>
> […]

2021 FC 1232 (CanLII)

> *Certification Process*
>
> Suppliers must submit a certification form by October 29, 2021, certifying that their personnel who access Government of Canada workplaces will be fully vaccinated as of November 15, 2021. Contractors who do not submit the certification may be subject to further measures, up to and including termination.
>
> […]
>
> *Future contracts*
>
> As of **October 15, 2021,** bidders for contracts that will require supplier personnel to access federal government workplaces must submit a certification proving they meet the vaccine requirement as a condition of the bid. Bids that do not include the certification will not be considered. The certification form will be included with implicated Requests for Proposals.
>
> [Bold in original; I have italicized headings for clarity.]

[27] The certification referred to in the policy is provided in a separate document. It requires the supplier to certify that all personnel that the business will provide under the applicable contract who access federal government workplaces where they may be in contact with public servants (a) will be fully vaccinated against COVID-19, or (b) for personnel unable to be vaccinated for medical or religious reasons, or other prohibited grounds of discrimination, will be subject to approved accommodation and mitigation measures.

C. *The applicant and his employment*

[28] Mr. Lavergne-Poitras has chosen not to be vaccinated against COVID-19. He describes in his affidavit his concerns about the risks and side effects associated with the COVID-19 vaccines that have been approved by Health Canada, including both mRNA vaccines and traditional viral

2021 FC 1232 (CanLII)

vector vaccines. His concerns about complications affecting the heart are exacerbated by the fact that his father died young of a heart attack.

[29] Mr. Lavergne-Poitras has been employed by PMG as a testing technologist since July 2019. His work involves testing on existing and new car-safety systems such as driver assistance systems. He implements test and research protocols, installs and calibrates equipment, performs tests, and collects and analyzes test data. It is work that he thoroughly enjoys and is the most satisfying employment he has been involved in.

[30] Mr. Lavergne-Poitras works at a facility in Blainville, Quebec that is owned by Canada. The Blainville facility has exterior road test tracks, one administration building and two laboratory buildings. PMG provides services to Canada at the Blainville facility pursuant to a contract with Transport Canada. There are 89 people working at the Blainville facility, five of whom are federal government employees. According to Mr. Lavergne-Poitras, of those five, three work in different buildings from him and have little or no interaction with him, while the other two work from home. Mr. Lavergne-Poitras' testing is mostly carried out on the exterior road tracks, and he spends "the major part" of his work time by himself without needing to be in the presence of other individuals.

[31] PMG has implemented sanitary safeguards at the Blainville facility, including hand washing, workstation disinfection, social distancing, and the wearing of masks when working in proximity to others. Mr. Lavergne-Poitras and others at the Blainville facility observe these protocols.

2021 FC 1232 (CanLII)

[32] As a supplier to the federal government, PMG is subject to the supplier vaccination policy. In an affidavit filed by the Attorney General, Ricardo Seoane, a senior official with PSPC, confirmed that PMG has submitted a certification in accordance with the supplier vaccination policy.

[33] In addition, PMG is in the final year of its current contract with Transport Canada. Transport Canada has issued tender documents with respect to a new contract, on which PMG expects to be the sole bidder since it is the only company in Canada in the automotive safety systems testing field. In October 2021, Transport Canada issued an amendment to the tender documents to require bidders to provide with their bid a certification in accordance with the supplier vaccination policy.

[34] After the supplier vaccination policy was issued, the President of PMG told Mr. Lavergne-Poitras that PMG would either indefinitely lay off or terminate the employment of any unvaccinated individuals including Mr. Lavergne-Poitras as of November 15, 2021. At the time, there were five such employees. Mr. Lavergne-Poitras understands that three agreed to be vaccinated while he and another have not.

[35] Mr. Lavergne-Poitras describes his concerns and the choice he is faced with as follows:

> My knowledge of and concerns with these potential side effects and complications results in severe anxiety over being vaccinated for COVID-19, to the point that if forced to choose between being vaccinated to remain employed with PMG, or losing my job and avoiding vaccination, I would likely choose the latter;

2021 FC 1232 (CanLII)

[36] It is worth noting at this point that Mr. Lavergne-Poitras describes in some detail in his affidavit the reason for his concerns, including the nature of mRNA vaccines, the approval process, the existence of ongoing clinical trials and the absence of long-term safety data, and documented side effects. He goes so far as to cite the Nuremberg Code regarding informed consent for medical experiments on human beings. As the Attorney General concedes, this case is not about the reasonableness or advisability of Mr. Lavergne-Poitras' concerns. What matters is that Mr. Lavergne-Poitras has chosen not to be vaccinated. No COVID-19 vaccine mandate has been imposed in Canada at the federal or provincial level. The Attorney General agrees that Mr. Lavergne-Poitras has the right to decide not be vaccinated and that neither Canada or the Court should second guess that decision. This motion is about the consequences of that decision caused by the supplier vaccination policy and whether the imposition of those consequences should be temporarily suspended until Mr. Lavergne-Poitras can challenge their lawfulness.

[37] With this summary of the issues and the stakes for Mr. Lavergne-Poitras, I turn to the arguments put forward for the requested injunction.

IV. Analysis

A. *Serious Issue*

[38] The first branch of the test for an interlocutory injunction recognizes that an injunction motion is not the time to fully decide the merits of the underlying proceeding. Rather, an applicant need only show that the issues raised are serious ones requiring determination at the ultimate hearing. This "serious question to be tried" threshold is a low one, requiring only that

2021 FC 1232 (CanLII)

the applicant's case be "neither frivolous nor vexatious": *RJR-MacDonald* at pp 335, 337; *R v Canadian Broadcasting Corp*, 2018 SCC 5 at para 12. To assess whether there is such a serious issue or question, the Court must make a "preliminary assessment of the merits of the case" based on the evidence filed on the motion: *RJR-MacDonald* at p 337.

2021 FC 1232 (CanLII)

[39] In this case, the underlying proceeding is Mr. Lavergne-Poitras' application for declaratory and injunctive relief in respect of the supplier vaccination policy. In his application, Mr. Lavergne-Poitras makes three main allegations. He claims the supplier vaccination policy is *ultra vires* because it is not supported by any enabling power or legislation. He claims it violates his rights under section 7 of the *Charter*. And he claims it violates his right to security of the person under paragraph 1(*a*) of the *Canadian Bill of Rights*, SC 1960, c 44. Mr. Lavergne-Poitras does not raise the *Bill of Rights* argument on this motion, focusing solely on the *ultra vires* and *Charter* arguments.

(1) There is no serious issue to be determined regarding the authority to issue the supplier vaccination policy

[40] In his memorandum of fact and law, Mr. Lavergne-Poitras states that the supplier vaccination policy "does not appear to be supported by legislation" and that counsel has not identified any statutory provision giving the Government of Canada the power to "mandate vaccination of individuals." He argues that implementing the supplier vaccination policy in the absence of such a statutory provision is contrary to fundamental rule of law principles.

[41] The supplier vaccination policy does not mandate vaccination of individuals. It imposes contractual sanctions on suppliers who do not certify that their personnel present at federal government workplaces where there are public servants are fully vaccinated. While it indirectly imposes a consequence on suppliers' employees who choose not to be vaccinated, it does not mandate vaccination. This is a material distinction. The policy must be assessed on its terms and in the manner in which it encourages and promotes vaccination. Among other things, this makes Mr. Lavergne-Poitras' argument that the Province of Quebec has not exercised its authority under section 123 of the *Public Health Act*, CQLR, c S-2.2 to "order compulsory vaccination of the entire population or any part of it against […] any other contagious disease seriously threatening the health of the population" irrelevant.

[42] As authority for the supplier vaccination policy, the Attorney General points to PSPC's "inherent authority" to set policy for its procurement initiatives. In support of this assertion, the Attorney General initially pointed only to a statement from Mr. Seoane that PSPC has that inherent authority. However, the Attorney General provided a more thorough explanation at the hearing, relying on the authority of Canada to enter into contracts, and the resulting power as a contracting party to define the terms of those contracts.

[43] As the Attorney General notes, the Minister of Public Services and Procurement is given the power to enter into contracts, and fix the terms and conditions of them, by sections 20 and 21 of the *Department of Public Works and Government Services Act*, SC 1996, c 16. I agree with the Attorney General that as a contracting party, no additional statutory authority is necessary for PSPC to adopt a policy that results in terms applicable to the contracts it enters into. This is not

2021 FC 1232 (CanLII)

to say that such a policy may not be subject to challenge on other grounds. It is simply to say that a contracting policy need not be based on a separate legislative provision setting out the contents of the policy.

[44] At the hearing of this motion, Mr. Lavergne-Poitras conceded that PSPC could require a certification as to vaccination status as a term of a future contract, such as that required in the tender documents PMG will apparently be bidding on in the near future. However, he contended that Canada could not unilaterally impose conditions in respect of an existing contract. He underscored the importance of the binding nature of a contract and the fact that one party to a contract has no general right to unilaterally modify its terms.

[45] Canada responded with reference to certain provisions in the Standard Acquisition Clauses and Conditions and to provisions in its agreement with PMG. I need not decide these matters, as I agree with Canada that to the extent there is any argument about whether Canada can require PMG to provide a certification with respect to its current agreement, this is a matter of contract between PMG and Canada. PMG, whose counsel was present at the hearing but who filed no evidence and made no submissions, provided the certification and has apparently not challenged the applicability of the contractual provision to its current contract. Mr. Lavergne-Poitras is not privy to the contract. As a stranger to the contract between PMG and Canada, Mr. Lavergne-Poitras cannot argue that contract law prevents Canada from unilaterally imposing a new term on the contract.

[46] I conclude Mr. Lavergne-Poitras has raised no serious issue with respect to the statutory or contractual authority for PSPC to issue the supplier vaccination policy.

2021 FC 1232 (CanLII)

(2) There is no serious issue that the supplier vaccination policy violates Mr. Lavergne-Poitras' rights under section 7 of the *Charter*

[47] Mr. Lavergne-Poitras' decision not to receive a COVID-19 vaccine is not based on religious tenets or a particular health condition. He does not assert a violation of his right to equality under section 15 of the *Charter*. Rather, he argues the supplier vaccination policy violates his rights under section 7 of the *Charter*, which reads as follows:

Life, liberty and security of person	**Vie, liberté et sécurité**
7 Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.	**7** Chacun a droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale.

[48] The Supreme Court of Canada has recently reiterated that to show a violation of section 7, two elements must be established. First, the impugned law or government action must deprive a claimant of the right to life, liberty or security of the person. In other words, the applicant's life, liberty or security of the person interest must be "engaged." Second, the deprivation in question must not accord with the principles of fundamental justice: *R v CP*, 2021 SCC 19 at para 125 citing *Carter v Canada (Attorney General)*, 2015 SCC 5 at para 55.

[49] For the reasons below, I conclude Mr. Lavergne-Poitras has established a serious issue to be determined with respect to the first element of this analysis, namely that his liberty or security of the person interest is engaged. However, I conclude he has not raised a serious issue to be determined with respect to the alleged violation of the principles of fundamental justice.

2021 FC 1232 (CanLII)

[50] Before turning to these questions, I will address the Attorney General's argument that Mr. Lavergne-Poitras does not have standing to raise his *Charter* arguments in the context of the supplier vaccination policy.

(a) *Standing*

[51] For reasons similar to those referred to above, the Attorney General argues Mr. Lavergne-Poitras lacks standing to challenge the supplier vaccination policy on *Charter* grounds since it is a matter of contract between Canada and its suppliers. I conclude that there is a sufficiently serious issue to be determined with respect to standing that this motion should not be dismissed on this basis.

[52] Although the supplier vaccination policy is implemented through contractual provisions and potential contractual sanctions, it is clear the policy can have impacts on non-contracting parties. While those impacts may not give standing to challenge the policy on contractual grounds, it is considerably less clear that they also preclude a *Charter* challenge.

[53] The *Charter* requires not just legislation but all government action to respect the protected rights of Canadians. If those whose *Charter* rights were impacted by a government policy could not challenge the policy on the basis that it was only implemented via contractual terms with third parties, the result could be a government action that violates a *Charter* right without there being a meaningful remedy. This is contrary to the general principle that there should be a full, effective, and meaningful remedy for *Charter* violations: *Doucet-Boudreau v Nova Scotia (Minister of Education)*, 2003 SCC 62 at para 25.

2021 FC 1232 (CanLII)

[54] On the Attorney General's argument, the Government of Canada could implement a policy that requires government suppliers to only hire individuals of, for example, a particular race or ethnicity. Despite the clear discriminatory impacts of such a policy on individual employees, the Attorney General argues they could not seek vindication of their right to equality under section 15 of the *Charter* owing to principles of privity of contract. Rather, the Attorney General argues it would be for the employer alone to challenge the policy based on their employees' *Charter* rights. The employees' remedy, argues the Attorney General, would have to be against their employer, perhaps under applicable human rights legislation, for complying with the government policy. Similarly, the Attorney General argues that in this case, only PMG can challenge the supplier vaccination policy based on Mr. Lavergne-Poitras' right to liberty and security of the person under section 7.

[55] I need not decide these arguments, although I question them. The Attorney General did not point to jurisprudence establishing clearly that an individual whose *Charter* rights are violated by a government contracting policy is precluded by principles of privity from seeking a remedy for that violation. I conclude that there is a serious issue to be determined as to Mr. Lavergne-Poitras' standing to seek an injunctive remedy in respect of the supplier vaccination policy based on an asserted breach of his rights under section 7 of the *Charter*.

(b) *Deprivation of liberty or security of the person*

[56] In *Carter*, the Supreme Court of Canada summarized the nature of the rights to liberty and security of the person in the following language:

2021 FC 1232 (CanLII)

> Underlying both of these rights is a concern for the protection of individual autonomy and dignity. Liberty protects "the right to make fundamental personal choices free from state interference." Security of the person encompasses "a notion of personal autonomy involving . . . control over one's bodily integrity free from state interference" and it is engaged by state interference with an individual's physical or psychological integrity, including any state action that causes physical or serious psychological suffering.
>
> [Citations omitted; *Carter* at para 64.]

2021 FC 1232 (CanLII)

[57] Mr. Lavergne-Poitras claims the supplier vaccination policy effectively requires vaccination as a condition of remaining employed by PMG. He argues that mandating medical treatment against a person's will violates the right to security of the person, while mandating vaccination as a condition of remaining employed in a chosen career infringes the person's right to liberty.

[58] The Attorney General concedes that forced medical treatment, including forced vaccination, would engage liberty and security of the person interests under section 7 of the *Charter*. However, the Attorney General argues that the supplier vaccination policy does not mandate vaccination, and that section 7 does not protect purely economic interests, including an individual's right to pursue their chosen profession, citing *Siemens v Manitoba (Attorney General)*, 2003 SCC 3 at paras 45–46 and *Tanase v College of Dental Hygienists of Ontario*, 2021 ONCA 482 at paras 35–45.

[59] Mr. Lavergne-Poitras refers to the decision of the Supreme Court of Canada in *Godbout v Longueuil (City)*, [1997] 3 SCR 844. There, the Court struck down a municipal resolution requiring all new permanent employees to reside within the city boundaries. All members of the

Court concluded that the resolution infringed the right to respect for one's private life under section 5 of the Quebec *Charter of Human Rights and Freedoms*, CQLR, c C-12. Three of the nine judges also concluded the resolution was a violation of Ms. Godbout's rights under section 7 of the *Charter*.

2021 FC 1232 (CanLII)

[60] These judges found the liberty interest in section 7 encompassed the right to choose where to establish one's home: *Godbout* at para 66. Notably, this interest was considered compromised not by a direct legal requirement that Ms. Godbout live in the city, but by a provision that required her to live in the city if she wished to remain employed by the city: *Godbout* at paras 58–61. Thus, these members of the Court considered the liberty interest to be engaged not only by a direct mandate, but by the imposition of a requirement as a term of employment. This was so even though Ms. Godbout signed the residence declaration required by the city: *Godbout* at para 70. Even though Ms. Godbout could choose not to be employed by the city, or could choose to live in the city, her liberty interests were engaged by the city's requirement that she live in the city to be employed by the city.

[61] As noted, the conclusions in *Godbout* regarding section 7 were only adopted by three judges: see *Alberta (Aboriginal Affairs and Northern Development) v Cunningham*, 2011 SCC 37 at para 93. However, the decision provides some authority for the proposition that engaging a liberty or security of the person interest as a condition of employment may constitute a deprivation of that right for the purposes of the section 7 analysis. The Attorney General's contrary arguments based on *Siemens* and *Tanase* may ultimately be successful or they may not. For present purposes, I conclude Mr. Lavergne-Poitras' argument that his liberty and security of

the person interests are engaged by a policy that effectively requires him to be vaccinated in order to be employed by PMG is not frivolous or vexatious. It meets the threshold of a serious issue to be tried.

(c) *Principles of fundamental justice*

[62] Not all deprivations of liberty or security of the person are contrary to section 7 of the *Charter*. Section 7 only protects against such deprivations that violate the principles of fundamental justice: *Carter* at para 71. For a principle to constitute a principle of fundamental justice, it must be a legal principle, there must be significant societal consensus that it is fundamental to the way in which the legal system ought to operate, and it must be sufficiently precise to yield a management standard for analysis: *Canada (Attorney General) v Federation of Law Societies of Canada*, 2015 SCC 7 at para 87 citing *R v Malmo-Levine*, 2003 SCC 74 at para 113.

[63] The Supreme Court in *Carter* refers to three principles that have emerged as central in section 7 jurisprudence: “laws that impinge on life, liberty or security of the person must not be arbitrary, overbroad, or have consequences that are grossly disproportionate to their object” [emphasis added]: *Carter* at para 72. Mr. Lavergne-Poitras contends that the supplier vaccine policy violates each of these three principles, namely arbitrariness, overbreadth, and gross disproportionality.

2021 FC 1232 (CanLII)

[64] Each of these involves comparison with the object of the law that is challenged: *Carter* at para 73. It is therefore appropriate to begin by identifying the object of the impugned government action.

[65] Mr. Lavergne-Poitras suggests the purpose of the supplier vaccination policy is "arguably to protect at-risk individuals from the spread of COVID-19." He then focuses his arguments on "at-risk" individuals. However, neither the language of the policy nor the context in which it was issued suggests it is targeted at protecting "at-risk" individuals in particular. Indeed, as the evidence of Dr. Lourenco makes clear, all individuals may be considered "at risk" of COVID-19 infection to a greater or lesser degree.

[66] Rather, the purpose of the supplier vaccination policy is described in PSPC's October 6, 2021 announcement of the policy, namely to "ensure that federal workplaces are kept safe and that employees who work in them are protected." This purpose of protecting the health and safety of federal government employees at federal workplaces is clear from the scope of the policy. It applies only to federal workplaces "where federal government employees are present." It does not apply to contracts for the provision of goods. Nor does it apply where services are solely performed in non-federal government workplaces. The certification required of suppliers is that personnel will be vaccinated if they access federal workplaces where they may be in contact with public servants. The focus throughout is on the health and safety of federal government employees, and in particular on reducing the risk of the SARS-CoV-2 virus and its variants being transmitted to those employees by the employees of suppliers to the federal government who are in contact with them.

2021 FC 1232 (CanLII)

[67] It is against this employee health protection goal that Mr. Lavergne-Poitras' allegations of arbitrariness, overbreadth, and gross disproportionality must be assessed.

(i) Arbitrariness

[68] A law or government action will be contrary to the principles of fundamental justice as being arbitrary where there is "no rational connection between the object of the law and the limit it imposes on life, liberty or security of the person": *Carter* at para 83. To avoid being arbitrary, the effect on the individual must bear "some relation" to the law's purpose as opposed to having no connection to the objective: *Canada (Attorney General) v Bedford*, 2013 SCC 72 at para 111.

[69] While Mr. Lavergne-Poitras argued in his memorandum of fact and law that the supplier vaccination policy is arbitrary, counsel conceded during argument that there is "some relation" between the policy and its effect on Mr. Lavergne-Poitras and the objective of health and safety of public employees. In my view, this is indisputable. The evidence is that being fully vaccinated reduces the likelihood that an individual will transmit the virus to another. Requiring full vaccination as a condition of working at a federal workplace where federal employees are present is clearly rationally connected to the employee health protection objective of the policy. Mr. Lavergne-Poitras has raised no serious issue that the supplier vaccination policy is arbitrary.

[70] In this regard, it is important to note, as the Chief Justice recently did in reviewing COVID-19 quarantine measures directed at international air travellers, that a government action is not arbitrary simply because it "is in some way unsound" or it fails to further the objective as effectively as a different action: *Spencer v Canada (Health)*, 2021 FC 621 at para 122 citing

2021 FC 1232 (CanLII)

Ewert v Canada, 2018 SCC 30 at para 73. Mr. Lavergne-Poitras' arguments about the implementation of other safety measures such as masks and social distancing do not affect the arbitrariness of the supplier vaccination policy.

(ii) Overbreadth

[71] A law or government action will be contrary to the principles of fundamental justice for being overbroad where it "goes too far by denying the rights of some individuals in a way that bears no relation to the object": *Carter* at para 85 citing *Bedford* at paras 101, 112–113. Mr. Lavergne-Poitras cites the Supreme Court's decision in *Heywood* for the proposition that a law is overbroad where the deprivation of liberty it imposes goes beyond what is necessary: *R v Heywood*, [1994] 3 SCR 761 at pp 792–794.

[72] Mr. Lavergne-Poitras claims the supplier vaccination policy is overbroad for three reasons. First, he argues there is no evidence to connect the supplier vaccination policy to an "aggravated risk of transmission of COVID-19," noting that public service employees are not an "overly at-risk group." This is not an overbreadth argument, as it does not address whether the policy denies the rights of some individuals in a way that bears no relation to the object. In any event, whether public service employees are at higher or lower risk than others is wholly beside the point. The objective of the policy is to protect the health and safety of employees of the federal government. The fact that those employees may not have a different risk profile than the general population cannot mean there is no justification for taking measures to protect their health and safety, or that the measures taken are overbroad.

2021 FC 1232 (CanLII)

[73] Second, Mr. Lavergne-Poitras argues that public service employees do not spend their entire time at work, and that they will attend meetings outside the workplace, spend time with family and others, and engage in activities that will entail interactions with unvaccinated members of the community. Again, this is irrelevant and is not an argument for overbreadth. The supplier vaccination policy does not purport or seek to eliminate all risk of contagion from all possible sources. It seeks to reduce the risk of transmission to federal government employees at their workplace. To the extent that Mr. Lavergne-Poitras is arguing that if a policy does not control all potential sources of infection it cannot purport to reduce risk of infection from some, this must be rejected.

[74] Third, Mr. Lavergne-Poitras argues that both the class of workplaces and the class of persons the policy applies to are overbroad. As an example, he points to the fact that he has limited interaction with federal government employees in the course of his work. He argues the policy can and should be more narrowly crafted in terms of its subject matter. While this is an argument going to overbreadth, it is not one that raises a serious issue. The supplier vaccination policy contains several provisions ensuring it applies only to those who will be in contact with federal government workers. As noted, the policy only applies to locations where federal government employees are present. The certification required by the policy only calls for supplier personnel who may contact government employees to be fully vaccinated. There is a rational connection between the employee health and safety purpose of the policy and ensuring such people are fully vaccinated, even if the degree to which they present a risk may vary depending on the circumstances.

2021 FC 1232 (CanLII)

[75] As Chief Justice Lamer stated in *Bedford*, the "root question" with respect to both arbitrariness and overbreadth is "whether the law is inherently bad because there is *no connection*, in whole or in part, between its effects and its purpose" [emphasis in original]: *Bedford* at para 119. I agree with the Attorney General's submission that Mr. Lavergne-Poitras has not identified any conduct or impact captured by the supplier vaccination policy that bears no connection to its purpose. Even on the low threshold applicable on a motion for an interlocutory injunction, Mr. Lavergne-Poitras has failed to show there is a serious issue that the deprivation of his right to liberty and security of the person occasioned by the supplier vaccination policy was not in accordance with the principles of fundamental justice.

2021 FC 1232 (CanLII)

(iii) Gross disproportionality

[76] Unlike arbitrariness and overbreadth, which assess whether there is a connection between the purpose of the state action and its effect, gross disproportionality assesses whether the effect is so grossly disproportionate to the purpose that it cannot be rationally supported: *Bedford* at para 120. As the Attorney General notes, gross disproportionality as a principle of fundamental justice "only applies in extreme cases where the seriousness of the deprivation is totally out of sync with the objective of the measure": *Bedford* at para 120; *Canada (Attorney General) v PHS Community Services Society*, 2011 SCC 44 at para 133; *Carter* at para 89. The standard is high. The impact may be incommensurate with the purpose without reaching the standard for gross disproportionality: *Carter* at para 89.

[77] Here, the effect on Mr. Lavergne-Poitras is that he will lose his employment since he chooses not to be vaccinated. This is not a direct impact on his physical integrity, but it remains a

serious consequence. Despite this, I cannot conclude there is a serious issue that this deprivation is totally out of sync with the objective of the measure. The importance of protecting the health and safety of employees and the evidence of risks arising from COVID-19 infection allow for even the significant consequence of loss of employment with a third party supplier to the government to be proportionate to the objective. Mr. Lavergne-Poitras has not raised a serious issue that the effects of the supplier vaccination policy are grossly disproportionate to its purpose.

2021 FC 1232 (CanLII)

[78] I close on this issue by noting that the foregoing analysis is based on the evidence and arguments presented on this motion. At the hearing of the merits of the underlying application, different evidence and arguments may be presented that may convince the Court that there is a deprivation of liberty or security of the person that is not in accordance with the principles of fundamental justice. I do not purport to make any determinations on the final merits of the underlying application on this motion.

(d) *Section 1: Demonstrably justified in a free and democratic society*

[79] The rights protected by the *Charter* are not absolute. Section 1 of the *Charter* provides that they may be subject to "such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." That said, given the importance of the right to life, liberty, and security of the person, and since section 7 of the *Charter* already contains a balancing through reference to the principles of fundamental justice, government violations of section 7 are "not easily saved" by section 1: *New Brunswick (Minister of Health and*

Community Services) v G (J), [1999] 3 SCR 46 at para 99; *Charkaoui v Canada (Citizenship and Immigration)*, 2007 SCC 9 at para 66.

[80] Mr. Lavergne-Poitras argues that the asserted violation of his section 7 rights cannot be justified under section 1. The Attorney General accepts that justification of any *Charter* violation under section 1 would occur at the hearing on the merits of Mr. Lavergne-Poitras' application. In any case, given my conclusion that no serious issue has been raised with respect to a violation of section 7 of the *Charter*, I need not address any section 1 issues.

B. *Irreparable Harm*

[81] The conclusion that Mr. Lavergne-Poitras has not established a serious issue to be determined on his application is sufficient to dispose of his request for an interlocutory injunction. However, for completeness and in case I am wrong in that conclusion, I will nonetheless address the other parts of the test for an injunction.

[82] The Supreme Court of Canada in *RJR-MacDonald* described irreparable harm in the following terms:

> "Irreparable" refers to the nature of the harm suffered rather than its magnitude. It is harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other.
>
> [Emphasis added; *RJR-MacDonald* at p 341.]

[83] Mr. Lavergne-Poitras identifies three types of irreparable harm he will suffer if the injunction is not granted. First, he says he will lose his employment. Since PMG is the only

2021 FC 1232 (CanLII)

employer in his field in Canada, this means he will need to re-orient his career. Second, he refers to the severe anxiety that both the prospect of vaccination and the loss of employment cause him. Third, he asserts the supplier vaccination policy "likely affects a large number of other individuals" in Canada and that the Court should have taken into account its effects on those potentially affected individuals, including anxiety, depression, and economic hardship.

2021 FC 1232 (CanLII)

[84] With respect to Mr. Lavergne-Poitras' loss of employment, this Court has found that the loss of employment does not constitute irreparable harm, as lost wages can be recovered as money damages: *Cadostin v Canada (Attorney General)*, 2019 FC 831 at para 13 quoting *Shoan v Canada (Attorney General)*, 2016 FC 1031 at para 42. Justice Dunphy of the Ontario Superior Court of Justice reached the same conclusion recently in a case involving a vaccine requirement in the private sector employment context in *Blake v University Health Network*, 2021 ONSC 7139:

> As a general rule, private-sector employment may be terminated at will outside of the collective bargaining sphere in Ontario. Where cause is not alleged, or if cause is alleged and not proved, compensation is payable to the employee. The level of compensation may be a function of a written contract, of statutory minimum standards or of the common law. Given that fundamental principle, it is hard to see how any plaintiff who is not in a union can allege irreparable harm arising from threatened termination of employment. If the termination of their employment is not justified, they are not entitled to their job back – they are entitled to money. Money, by definition is not only an adequate remedy it is the *only* remedy.
>
> [Underline added; italics in original; *Blake* at para 28.]

[85] If Mr. Lavergne-Poitras succeeds on the underlying application and can demonstrate that he lost his position and suffered monetary harm as a result, he may be able to establish a claim

for damages either as a remedy pursuant to subsection 24(1) of the *Charter* or, should a viable cause of action be established, against his employer. Either way, the loss would not constitute irreparable harm in the sense described in *RJR-MacDonald*.

2021 FC 1232 (CanLII)

[86] Recognizing this, Mr. Lavergne-Poitras argues that while lost wages might be compensable in damages, the need to re-orient his career is not. I disagree. The evidence does not establish with any degree of reliability that Mr. Lavergne-Poitras will need to re-orient his career in the period between now and when his application is heard. In any event, I do not believe that such a change in position renders a loss of employment irreparable, regardless of the degree of satisfaction Mr. Lavergne-Poitras may take from his present occupation.

[87] With respect to Mr. Lavergne-Poitras' allegations of anxiety, the evidence is far from sufficient to establish a degree of harm to his mental health that would qualify as irreparable. Indeed, the only evidence from Mr. Lavergne-Poitras about his anxiety is the statement reproduced at paragraph [35] above. Irreparable harm must be established with more than just general assertions, assumptions, or speculation. There must be evidence at a convincing level of particularity that demonstrates a real probability of irreparable harm: *Gateway City Church v Canada (National Revenue)*, 2013 FCA 126 at paras 14–16.

[88] With respect to the third argument, there is no evidence before the Court of the impact of the supplier vaccination policy on other individuals. While the Court is prepared to infer that the policy applies to a large number of employees of suppliers to the federal government, the Court cannot take judicial notice of either the personal choices of those individuals or the fact that they

will suffer irreparable harm between now and when Mr. Lavergne-Poitras' application for judicial review can be heard. In the absence of any supporting evidence, the Court cannot speculate about the harm that may be suffered by others and the extent to which that harm may not be compensable in damages. Having failed to show that he will suffer irreparable harm, he cannot ask the Court to assume without evidence that others will suffer greater harm than he will.

2021 FC 1232 (CanLII)

[89] I therefore conclude Mr. Lavergne-Poitras has not established on the evidence that he will be irreparably harmed if the requested injunction is not granted.

[90] I note that I reach this conclusion without accepting the Attorney General's argument that the alleged harm to Mr. Lavergne-Poitras is not "unavoidable," and therefore not irreparable, because Mr. Lavergne-Poitras can choose to be vaccinated. Where an individual has raised concerns about their section 7 right to bodily integrity, it is no response to their concerns about irreparable harm to suggest they can simply undergo the medical procedure that would impact that very right.

C. *Balance of Convenience*

[91] The balance of convenience, or "balance of inconvenience," seeks to weigh the impacts of granting the requested injunction against the impacts of refusing the requested injunction. The impacts on Mr. Lavergne-Poitras of refusing the injunction have been described above. On the other side of the scale, the Court considers the impacts on others, particularly in the context of an injunction that will have a broader public effect.

[92] When the constitutional validity of a legislative provision is challenged, the balance of convenience includes consideration of the public interest: *Manitoba (AG) v Metropolitan Stores Ltd*, [1987] 1 SCR 110 at pp 129–130; *RJR-MacDonald* at p 343. In *Harper v Canada (Attorney General)*, 2000 SCC 57, the Supreme Court described the particular balancing issues in such a challenge in the following language:

> Applications for interlocutory injunctions against enforcement of still-valid legislation under constitutional attack raise special considerations when it comes to determining the balance of convenience. On the one hand stands the benefit flowing from the law. On the other stand the rights that the law is alleged to infringe. An interlocutory injunction may have the effect of depriving the public of the benefit of a statute which has been duly enacted and which may in the end be held valid, and of granting effective victory to the applicant before the case has been judicially decided. Conversely, denying or staying the injunction may deprive plaintiffs of constitutional rights simply because the courts cannot move quickly enough.
>
> [Emphasis added; citations omitted; *Harper* at para 5.]

[93] These principles apply equally when what is challenged is not legislation but a validly issued policy, whether or not it is implemented through contractual provisions.

[94] As Mr. Lavergne-Poitras quite rightly notes, “the government does not have a monopoly on the public interest”: *RJR-MacDonald* at pp 343–344. The public interest may include impacts on the public flowing from legislation. In this case, this includes not only supplier personnel such as Mr. Lavergne-Poitras who may be impacted if the injunction is not granted, but also federal government employees who might be impacted if the injunction is granted.

2021 FC 1232 (CanLII)

[95] Mr. Lavergne-Poitras contends broadly that the supplier vaccination requirement represents a severely restrictive measure that suspends *Charter* rights without data to show they are justified, and that his *Charter* challenge addresses "arbitrary decisions of the Government that are not based on scientific evidence and lack transparency." Mr. Lavergne-Poitras may not have been aware of, or may not agree with the assessment of, the scientific evidence that underlies the supplier vaccination policy. It is clear that he views the risk-benefit analysis of vaccination differently. However, this does not render the policy arbitrary, and does not push the balance of convenience in favour of suspending the policy.

[96] The evidence shows that COVID-19 poses, and continues to pose, a significant health risk to Canadians, including federal government employees. The Government of Canada is justified in taking steps to protect the health and safety of its employees by reducing their exposure to the risk of infection. The evidence that vaccines reduce the likelihood of transmission is not contested. Requiring supplier personnel who will come in contact with government employees at their place of work is a rational measure to reduce exposure and promote the health and safety of employees. In the words of Justice Pentney in rejecting an interlocutory injunction in respect of COVID-19 quarantine measures, "the challenged measures are a rational response to a real and imminent threat to public health, and any temporary suspension of them would inevitably reduce the effectiveness of this additional layer of protection": *Spencer v Canada (Attorney General)*, 2021 FC 361 at para 114.

[97] In any event, as the Supreme Court has reiterated, when considering whether to suspend the operation of valid law (or policy) at an interlocutory stage, the declared public benefit of the

2021 FC 1232 (CanLII)

law should be assumed. An applicant who relies on the public interest must demonstrate that the suspension would itself provide a public benefit: *Harper* at para 9 quoting *RJR-MacDonald* at pp 348–349. Mr. Lavergne-Poitras has failed to do so. While he argues the public interest lies in "the protection of the *Charter* rights of thousands of Canadians, who are being denied the right to pursue the career of their choice, for exercising bodily autonomy," there is simply no evidence before me to conclude that there is such denial, or to weigh those rights against the health and safety interests of federal public servants and the broader interest in permitting valid government policy to be implemented.

2021 FC 1232 (CanLII)

[98] The Supreme Court of Canada in *Harper* emphasized the importance of the assumption that laws purporting to serve the public interest do so:

> The assumption of the public interest in enforcing the law weighs heavily in the balance. Courts will not lightly order that laws that Parliament or a legislature has duly enacted for the public good are inoperable in advance of complete constitutional review, which is always a complex and difficult matter. It follows that only in clear cases will interlocutory injunctions against the enforcement of a law on grounds of alleged unconstitutionality succeed.
>
> [Emphasis added; *Harper* at para 9.]

[99] Mr. Lavergne-Poitras has not convinced me that this is one of those "clear cases." If the requested injunction is issued, there would be material harm to the public interest, both in the form of increased health risks to federal employees and by undermining a considered policy implemented by the federal government as employer. These harms significantly outweigh the harms identified by Mr. Lavergne-Poitras if the injunction is not granted. The balance of convenience favours refusing the requested injunction.

D. *Requested Alternative Relief*

[100] In the alternative to his request that the supplier vaccination policy be suspended as a whole, Mr. Lavergne-Poitras seeks an interlocutory injunction suspending the policy with respect to his workplace, the Blainville facility, or declaring the policy does not apply to it. He argues that the risk of him infecting a federal government employee at the Blainville facility is so low given the number of such employees, his limited interaction with them, and the largely outdoor nature of his work, that the harm to him of applying the policy outweighs any risk or harm in suspending it.

[101] I cannot agree. My conclusions above about the lack of a serious issue to be tried and the lack of irreparable harm apply equally to the narrower alternative relief. I also agree with the Attorney General that the positive impact of the policy is weakened by any attempt to apply a piecemeal approach to its implementation. The risks of COVID-19 transmission may well be higher or lower in different federal workplaces. But it is simply unfeasible to adopt as many different policies as there are federal workplaces. The limits on the scope of the policy provide reasonable assurance that it is not applied where there is no contact with federal government employees. It is neither the role of the Court nor in any way workable for the Court to create further individualized exceptions based on claims by particular supplier personnel that they pose little risk of transmission. As Justice Little of this Court stated in *Monsanto v Canada (Health)*, 2020 FC 1053 at paragraph 113:

> […] the harm to the public interest is not to be measured principally in this case by assessing the extent of the risk that the applicant will infect another person, based on his evidence that he is cautious and has always taken precautions to protect himself and others from COVID-19. Rather, it must be measured with reference to the broader public interest at stake […].

2021 FC 1232 (CanLII)

[102] I also reject Mr. Lavergne-Poitras' argument that the Blainville facility is not a federal workplace "under the responsibility of the Government of Canada" within the scope of the supplier vaccination policy because PMG employees manage and operate the facility. Leaving aside whether it lies with Mr. Lavergne-Poitras to raise such a contention rather than PMG, I cannot conclude on the evidence before me that the management and operation by PMG employees of a facility owned by Canada and at which federal government employees work takes the "responsibility" for the facility away from the Government of Canada and into the hands of PMG.

2021 FC 1232 (CanLII)

V. Conclusion

[103] Mr. Lavergne-Poitras has failed to establish a serious issue to be determined on his application that his rights under section 7 of the *Charter* have been violated, failed to establish that he would suffer irreparable harm if the requested injunction is not issued, and failed to establish that the balance of convenience favours issuance of the injunction. Any one of these would be sufficient to deny the requested interlocutory injunction. While Mr. Lavergne-Poitras may be successful or not in challenging the constitutionality of the supplier vaccination policy when the matter is heard on the merits, he has not satisfied the requirements to have that policy suspended until that challenge is heard.

[104] The motion for an interlocutory injunction is dismissed.

[105] The Attorney General confirmed at the hearing of the matter that they were not seeking costs of the motion. No costs are awarded.

ORDER IN T-1694-21

THIS COURT ORDERS that

1. The applicant's motion for an interlocutory injunction is dismissed.

2. There is no order as to costs.

"Nicholas McHaffie"
Judge

2021 FC 1232 (CanLII)

Annex A (E): COVID-19 vaccination requirement for supplier personnel

As modified October 27, 2021

As of **November 15, 2021,** all supplier personnel must be fully vaccinated to access federal government workplaces. Suppliers will be required to provide a certification to their contracting authority.

2021 FC 1232 (CanLII)

On this page

- Vaccination requirement for supplier personnel
- Existing contracts and contractors
- Meeting the vaccination requirement
- Certification Process
- Special circumstances and exemptions
- Monitoring
- Failure to meet requirement

Vaccination requirement for supplier personnel

As of November 15, 2021, supplier personnel who access federal workplaces must be fully vaccinated. Federal government workplaces include all places of work under the responsibility of the Government of Canada where federal government employees are present.

The vaccination requirement **does not apply** to:

- contracts that are solely for the provision of goods
- contracts where services are solely performed in non-federal government workplaces
- situations where federal employees must enter contractor facilities (for example: to conduct compliance audits or security verifications)
- contracted personnel who will only access common areas of buildings that are open to the public (such as the lobby)

Existing contracts and contractors

Contractor personnel who access Government of Canada workplaces to perform work pursuant to existing contracts are subject to the vaccine requirement.

Meeting the vaccination requirement

You are considered **fully vaccinated** if you have received:

- the full series of an accepted COVID-19 vaccine or a combination of accepted vaccines including:
    - 2 doses of any combination of Moderna Spikevax, Pfizer-BioNTech Comirnaty or AstraZeneca Vaxzevria (including CoviShield)
    - 1 dose of Janssen (Johnson & Johnson)

For more information on accepted COVID-19 vaccines, you can consult the Vaccines for COVID-19 page.

Certification Process

Suppliers must submit a certification form by October 29, 2021, certifying that their personnel who access Government of Canada workplaces will be fully vaccinated as of November 15, 2021. Contractors who do not submit the certification may be subject to further measures, up to and including termination.

Existing contracts

Suppliers with existing contracts may have received an email titled *ACTION REQUIRED: Mandatory vaccination for federal contractors (October 21, 2021)* with information about how to submit their certification form.

If you are a supplier with existing contracts and did not receive the October 21, 2021 email, complete the steps below to submit your certification.

Note: Contractors who do not require access to Government of Canada workplaces

If your contracts **do not require** access to Government of Canada workplaces, you still need to complete the attestation, but you will not need to complete step 2 (download, complete and sign the COVID-19 Vaccination Requirement Certification Form). Go directly to step 3 (complete the online Federal Supplier Vaccination Attestation).

Steps to submit your attestation

To submit your attestation, complete the following steps:

1. Locate your contract number(s) and Procurement Business Number
2. Download, complete and sign the COVID-19 Vaccination Requirement Certification Form (PDF, 67KB)
3. Complete the online Federal Supplier Vaccination Attestation

A fully accessible web format of the form is not currently available. For any questions or needs relating to accessibility, please send an email to: TPSGC.PACertificatsVaccins-APVaccinesCertificates.PWGSC@tpsgc-pwgsc.gc.ca

Future contracts

As of **October 15, 2021**, bidders for contracts that will require supplier personnel to access federal government workplaces must submit a certification proving they meet the vaccine requirement as a condition of the bid. Bids that do not include the certification will not be considered. The certification form will be included with implicated Requests for Proposals.

Special circumstances and exemptions

Some contracted personnel may not be able to get fully vaccinated due to:

- a certified medical contraindication
- religious grounds
- other prohibited grounds of discrimination as defined in applicable human rights legislation

In such cases, contractors are expected to inform the responsible contracting authority as soon as possible of:

2021 FC 1232 (CanLII)

- the number of such personnel
- the impacted work locations
- the steps the contractor proposes to undertake to mitigate any associated risks (such as regular rapid testing)

Exemptions and any mitigation measures are subject to approval by the contracting and technical authorities.

Contractors should not share any personal information with the contracting authority, such as any specifics about:

- medical contraindications
- disability
- religious grounds

Monitoring

Client organizations will be responsible for monitoring contractors' adherence the vaccination requirement. Additional information will be communicated to implicated contractors by the client organization or contracting authority as required.

Failure to meet requirement

Suppliers who do not provide the required certifications or who are subsequently discovered to have provided an untrue certification, may be subject to measures up to and including contract termination.

2021 FC 1232 (CanLII)

Annexe A (F): Exigence relative à la vaccination des fournisseurs contre la COVID-19

Tel que modifié le 27 octobre 27, 2021

À compter du **15 novembre 2021,** tous les employés des fournisseurs du gouvernement du Canada devront être entièrement vaccinés pour avoir accès aux lieux de travail du gouvernement fédéral. Les fournisseurs devront présenter une attestation à cet effet à leur autorité contractante.

2021 FC 1232 (CanLII)

Sur cette page

- Exigence relative à la vaccination des employés des fournisseurs
- Contrats et entrepreneurs existants
- Satisfaction de l’exigence relative à la vaccination
- Processus de certification
- Circonstances spéciales et exemptions
- Surveillance
- Manquement à l’exigence

Exigence relative à la vaccination des employés des fournisseurs

À compter du 15 novembre 2021, les employés des fournisseurs qui doivent avoir accès à des lieux de travail du gouvernement fédéral doivent être entièrement vaccinés. Par « lieux de travail du gouvernement fédéral », on entend tous les locaux dont le gouvernement du Canada est responsable et où se trouvent des employés du gouvernement fédéral.

L'exigence relative à la vaccination **ne s'applique pas** aux :

- contrats qui portent uniquement sur la fourniture de biens
- contrats pour lesquels les services sont exécutés exclusivement dans des endroits autres que les lieux de travail du gouvernement fédéral
- situations où des employés fédéraux doivent entrer dans les installations de l'entrepreneur (par exemple, pour mener des vérifications de conformité ou de sécurité)
- employés contractuels appelés à accéder seulement à des aires communes ouvertes au public (comme le hall d'entrée) dans un immeuble

Contrats et entrepreneurs existants

L’exigence relative à la vaccination s'applique aux employés des entrepreneurs titulaires de contrats existants qui doivent avoir accès aux lieux de travail du gouvernement fédéral pour réaliser des travaux.

Satisfaction de l’exigence relative à la vaccination

Une personne est considérée **pleinement vaccinée** si elle a reçu :

- toutes les doses requises d'un vaccin approuvé contre la COVID-19 ou une combinaison de vaccins approuvés, c’est-à-dire :
    - 2 doses combinant les vaccins Spikevax de Moderna, Comirnaty de Pfizer-BioNTech ou Vaxzevria d'AstraZeneca (y compris celui produit par CoviShield)
    - 1 dose du vaccin Janssen (Johnson & Johnson)

Pour en savoir plus sur les vaccins approuvés contre la COVID-19, vous pouvez consulter la page Vaccins contre la COVID-19.

Processus de certification

Les fournisseurs devront présenter un formulaire d'attestation avant le 29 octobre 2021, qui démontre que leurs employés nécessitant un accès aux lieux de travail du gouvernement fédéral seront entièrement vaccinés en date du 15 novembre 2021. Les fournisseurs qui ne soumettent pas cette attestation pourront faire l'objet de mesures pouvant aller jusqu'à la résiliation de leur contrat.

Contrats existants

Les fournisseurs actuellement titulaires d'un contrat auront possiblement reçu un courriel intitulé :*SUIVI REQUIS: Exigence de vaccination relative au personnel des fournisseurs* (le 21 octobre 2021) avec des renseignements sur la façon de soumettre leur formulaire d'attestation.

Si vous êtes un fournisseur titulaire de contrats existants et que vous n'avez pas reçu le courriel du 21 octobre 2021, suivez les étapes ci-dessous pour soumettre votre certification.

Remarque : Fournisseurs qui n'ont pas besoin d'avoir accès aux lieux de travail du gouvernement du Canada

Si vos contrats **ne nécessitent pas** l'accès aux lieux de travail du gouvernement du Canada, vous devez tout de même remplir l'attestation, mais vous n'aurez pas à remplir l'étape 2 (télécharger, remplir et signer le Formulaire d'attestation de l'exigence de vaccination contre la COVID-19). Passez directement à l'étape 3 : compléter l'Attestation relative aux vaccinations des fournisseurs du gouvernement fédéral en ligne.

Étapes à suivre pour soumettre votre attestation

Pour soumettre votre attestation, suivez les étapes suivantes :

1. Trouvez votre ou vos numéros de contrat et d'entreprise d'approvisionnement
2. Télécharger, remplir et signer le Formulaire d'attestation de l'exigence de vaccination contre la COVID-19 (PDF, 67 KB)
3. Compléter l'Attestation relative aux vaccinations des fournisseurs du gouvernement fédéral en ligne.

Le formulaire en format Web entièrement accessible n'est pas disponible en ce moment. Pour toute question relative à l'accessibilité, veuillez envoyer un courriel à TPSGC.PACertificatsVaccins-APVaccinesCertificates.PWGSC@tpsgc-pwgsc.gc.ca.

Contrats futurs

À compter du **15 octobre 2021,** les fournisseurs désirant soumissionner à un contrat qui exige l'accès de leurs employés à des lieux de travail du gouvernement fédéral devront présenter, à titre de condition de leur soumission, une attestation prouvant qu'ils satisfont à l'exigence relative à la vaccination. Les soumissions qui ne comprennent pas l'attestation seront ignorées. Le formulaire d'attestation figurera dans les demandes de propositions concernées.

Circonstances spéciales et exemptions

Certains facteurs peuvent empêcher des employés contractuels de se faire vacciner complètement :

2021 FC 1232 (CanLII)

- une contre-indication médicale attestée
- des motifs religieux
- d'autres motifs de distinction illicite, tels qu'ils sont définis dans la législation sur les droits de la personne applicable

Dans de tels cas, les entrepreneurs sont censés informer l'autorité contractante responsable dès que possible :

- du nombre d’employés concernés
- des lieux de travail touchés
- des mesures que l'entrepreneur propose de prendre pour atténuer les risques en découlant (comme l'administration régulière de tests de dépistage rapide)

Les dérogations et toute mesure d'atténuation pourront être soumises à l'approbation de l'autorité contractante et du responsable technique.

Les entrepreneurs ne devraient communiquer aucun renseignement personnel à l'autorité contractante, comme des détails sur :

- des contre-indications médicales
- des motifs religieux

Surveillance

Il appartiendra aux organisations clientes de surveiller la conformité des entrepreneurs à l'exigence relative à la vaccination. L'organisation cliente ou l'autorité contractante communiquera au besoin des informations supplémentaires à propos des exigences particulières aux entrepreneurs concernés.

Manquement à l’exigence

Les fournisseurs qui ne produisent pas les attestations requises ou dont les attestations s'avèrent fausses après coup pourront faire l'objet de mesures pouvant aller jusqu'à la résiliation de leur contrat.

2021 FC 1232 (CanLII)

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	DAVID LAVERGNE-POITRAS v THE ATTORNEY GENERAL OF CANADA (MINISTER OF PUBLIC SERVICE AND PROCUREMENTS) ET AL
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APPEARANCES:

Guy Lavergne	FOR THE APPLICANT
Gregory Tzemenakis Sharlene Telles-Langdon	FOR THE RESPONDENT, THE ATTORNEY GENERAL OF CANADA
Lucie Roy	FOR THE RESPONDENT, PMG TECHNOLOGIES INC.

SOLICITORS OF RECORD:

Me Guy Lavergne Saint-Lazare, Quebec	FOR THE APPLICANT
Attorney General of Canada Ottawa, Ontario	FOR THE RESPONDENT, THE ATTORNEY GENERAL OF CANADA
Le Corre & Associates LLP Laval, Quebec	FOR THE RESPONDENT, PMG TECHNOLOGIES INC.

2021 FC 1232 (CanLII)